

REMARKS

Claims 1, 9, and 17 are amended. No claims are canceled. Claims 1-20 are pending.

Section 103 - Kirsch in view of Bullock

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirsch (U.S.P. No. 6,230,338) in view of Bullock (U.S.P.A.P. No. 2001/0034907). Applicant respectfully traverses this rejection. Applicant assumes the rejection is not only of claims 1-13, but also of claims 14-20, and this response treats all claims.

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). Further, a prior art reference must be considered in its entirety, i.e. as a whole, including portions that would lead away from the claimed invention. *W. L. Gore &*

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Associates, Inc. v Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

"All words in a claim must be considered in judging patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 165 USPQ 494. 496 (CCPA 1970).

Claims 1-20 are presumably rejected as a group because they all specify a cushion having seams, and which is used on a shampoo neck receiving bowl. Claims 1, 9, and 17 are independent claims. Claims 2-8 are dependent upon claim 1, claims 10-16 are dependent upon claim 9, and claims 18-20 are dependent upon claim 17. The rejection is set forth entirely on page 2 of the Office Action.

On page 2, the Examiner states that Kirsch teaches a cushion used on a shampoo neck receiving bowl which employs a pocket of polymer gel, and that the shape of applicant's claim 1 is shown in FIG. 3. Applicant agrees. The Examiner goes on to state that Bullock teaches the use of a cushion having seams and which employs gel or air in its' pockets and is employed over the edge of a basin secured by section cups. In view of this taught use, the Examiner states that it would have been obvious to provide for the former to employ seams as taught by the latter and in view

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of the instant disclosure at page 11, lines 2-5, to provide for these seams to be in the form of a matrix. Applicant disagrees. The Examiner cites page 11, lines 2-5, of applicant's disclosure, but for what purpose applicant is unable to determine.

Applicant's cushion is a specific type of cushion having a specific use in conjunction with a shampoo bowl having a U-shaped, neck-receiving notch formed therein for receiving the neck of a user so as to position the user's head in the basin of the shampoo bowl. Applicant's cushion, as set forth in claims 1, 9, and 17, has specific structural features so that it can be installed onto a shampoo bowl, including a narrowed waist to overlies a segment of the U-shaped, neck-receiving notch, an enlarged proximal extremity to overlies a portion of the inner surface of the front wall of the shampoo bowl, and an enlarged distal extremity to overlies a portion of the outer surface of the front wall of the shampoo bowl. The cushion has opposing inner and outer faces. This inner face is to be directed toward the shampoo bowl, and the outer face is to be directed away from the shampoo bowl, in which the pockets and the seams are located at the outer face of the cushion. The pockets provide a cushioning effect at the

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outer face of the cushion, and the seams provide fluid conducting channels at the outer face of the cushion for conducting water away from the waist of the cushion. The provision of the seams is important, as they function to conduct water away from the waist of the cushion at the outer face of the cushion, and thus away from the neck of a patron resting against the waist of the cushion at the outer face thereof.

The prior art does not disclose or suggest the invention as claimed. Applicant admits that some of the claimed features are known in the prior art, however, the specific *combination* of features is neither suggested nor disclosed by the art of record. The instant invention sets forth language specifying a cushion having opposed enlarged proximal and distal extremities and a narrowed waist therebetween for positioning in U-shaped, neck receiving notch of a shampoo bowl, and having an inner face to be directed toward the shampoo bowl and an opposing outer face with cushioning pockets for providing a cushioning effect at the outer face of the cushion and seams forming fluid conducting channels at the outer face of the cushion that function to conduct water away from the waist of the cushion. The prior art of record does not disclose or

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suggest such a combination. Furthermore, there would be no motivation to combine seams to form fluid conducting channels with the cushion disclosed by Bullock because the seams are used to perform a function not contemplated by the prior art, namely, to conduct water away from the waist at the outer surface thereof of a cushion adapted to be installed into the U-shaped, neck receiving notch of a shampoo bowl.

Kirsch does not show seams, nor does it show fluid conducting channels formed in the cushion she discloses. Kirsch does not disclose any need to conduct water from the waist of her cushion, which is at least one precise problem applicant's invention is intended to solve. Kirsch neither recognizes the problem of conducting water away from the waist of her neck pad, nor solves this problem.

The padded mat presented by Bullock does not have a waist, and does not have structural features permitting it to be installed onto the U-shaped, neck receiving notch of a shampoo bowl. The purpose of the seams of the padded mat set forth by Bullock are for permitting the padded mat to be folded over a bathtub edge regardless of its width or contoured shape. It is to be noted that bathtubs do not

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have U-shaped, neck receiving notches, and that bathtubs are different structurally from a shampoo bowl, which is characterized as having a U-shaped, neck receiving notch. Bullock neither recognizes the problem of conducting water away from a portion of his padded mat, nor solves the problem.

Accordingly, the prior art may not be modified in the manner suggested by the Examiner. Assuming that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious because the prior art does not suggest the desirability of the modification.

In particular, even if the Kirsch's cushion was provided with seams of the type disclosed in Bullock, Bullock teaches that his seams act only as hinges for allowing the padded mat to fold over a bathtub edge. Accordingly, assuming that it would be proper to combine the teachings of Bullock with Kirsch for introducing seams into the cushion of Kirsch, the seams would only act as hinges for allowing Kirsch's padded mat to fold over the edge of a shampoo bowl. Because Bullock is silent as to teaching that his seams are provided for conducting water from a particular region of its padded mat, it does not

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follow that the seams of Bullock introduced into the cushion of Kirsch would serve two purposes, namely, allowing Kirsch's cushion to be folded over the edge of the shampoo bowl and forming fluid conducting channels for conducting water away from the waist thereof at the outer surface of the cushion. Accordingly, assuming that the combination of Bullock with Kirsch is a proper combination, combining the teachings of Bullock with Kirsch does not produce applicant's claimed invention.

Accordingly, applicant believes that claims 1, 9, and 17 are in condition for allowance. Further, claims 2-8, 10-16, and 18-20 are dependent upon claims that are allowable according to the argument set forth above and, therefore, each of them is allowable. In addition, the above arguments apply equally to claims 1, 9, and 17.

Clearly, the subject matter claimed in claims 1-20 is not shown in Kirsch and/or Bullock, and there is no suggestion or motivation in Kirsch and/or Bullock to modify the respective teachings to arrive at applicant's claimed invention. Further, the claimed features of applicant's inventive structure set forth in claims 1-20 are not inherent in Kirsch's and/or Bullock's disclosure since the

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structure of applicant's claimed subject matter and the structure in Kirsch and Bullock are not similar.

Since Kirsch and Bullock, each individually and in combination, do not disclose the claimed invention and since no suggested modification of Kirsch and/or Bullock can achieve the limitations of the claimed invention, applicant believes that claims 1-20 are now in condition for allowance. Accordingly, it is respectfully asserted that applicant's claims 1-20 are clearly allowable and the case is now in condition for allowance.

Dependent claims 2-8, 10-16, and 18-20 add additional novel features and are, a-fortiori, patentable. The cited and non-applied subsidiary references have been noted and reviewed, but are submitted to be less relevant than the relied-upon references.

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Examiner's thorough and thoughtful consideration of
this application is sincerely appreciated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael W. Goltry', written over the closing text.

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